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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,059	10/30/2003	Donna M. Wilson	MSP001	8133

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FULWIDER PATTON LEE & UTECHT, LLP
200 OCEANGATE, SUITE 1550
LONG BEACH, CA 90802

EXAMINER	
LARSON, JUSTIN MATTHEW	
ART UNIT	PAPER NUMBER
3782	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/697,059	WILSON, DONNA M.	
	Examiner	Art Unit	
	Justin M. Larson	3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *34-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *34-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/12/07 has been entered.

Claim Objections

2. Claim 34 is objected to because lines 6 and 7 should read, "~~the~~ respective opposite rail extremities" and "~~the~~ respective posts' opposite extremities" in order to avoid problems with antecedent basis. Appropriate correction is required.

3. Claim 39 is object to because line 11 should read, "a pair of bumper mounts~~~~ bracket devices". Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane (US 5,820,004 A) in view of Carlson et al. (US 4,403,716 A), further in view of Stuntz (US 3,876,123 A), and further in view of Luck (US 4,336,897 A).

Regarding claim 34, Lane discloses a rack device (Figure 6) comprising a pair of laterally spaced upstanding posts (20), an elongated horizontal top rail (17) including rail connectors (16) on opposite extremities of the rail, the connectors slidably attachable to the upstanding posts to form a frame, a plurality of rearwardly projecting arms (19) cantileverly mounted from respective rails. Lane fails to disclose a plurality of horizontal rails, a pair of spaced apart tension mounting bracket devices attached to the upstanding posts, and a plurality of pad devices.

Regarding the plurality of horizontal rails, Carlson et al. disclose a similar rack having upstanding posts (20), a horizontal top rail (18), rearwardly projecting arms, and a plurality of horizontal rails (26,28,30) disposed below the top rail. Carlson et al. teach that the plurality of horizontal rails serve to stiffen the frame (col. 2 lines 39-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a plurality of horizontal rails (17) on the rack of Lane, as taught by Carlson et al., in order to better stiffen the rack and better support a load carried thereon. Including more horizontal rails (17) would also allow for more projecting arms (19), which would allow for improved storage/support capabilities.

Regarding the tension mounting bracket devices, Stuntz teaches that a rack having two upstanding posts (31a,b) and rearwardly projecting arms (56a,b) can be secured to a vehicle bumper and biased toward the back wall of the vehicle via a pair of spaced apart tension mounting bracket devices (Figure 5) attached to the upstanding posts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach tension mounting bracket devices to the upstanding posts

of the Lane rack, as taught by Stuntz, so that the rack of Lane could be secured to the bumper of a hitch-less vehicle.

Regarding the pad devices, Luck teaches that pad devices (7) can be attached to the upstanding posts of a frame such that the pads are positioned between the frame and the back wall of a vehicle in order to prevent the frame from scratching the vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include pads on the upstanding posts of the Lane, as taught by Luck, in order to prevent the posts from scratching the back wall of a vehicle.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over the modified Lane device which is capable of being used in the intended manner, i.e., the device frame being used to carry elongate cargo disposed vertically adjacent a back wall of a recreational vehicle including a back wall top edge and a bumper, a front side of the frame facing the back wall and the top rail of the frame being positioned adjacent the back wall top edge, the pad devices being interposed between the frame and the back wall, and the pair of tension mounting bracket devices being attached to the vehicle bumper to bias the frame toward the back wall engaging the pad devices into contact with the back wall. There is no structure in the modified Lane device that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 36, the arms of the modified Lane rack include arm couplers (18) mounted to the rails for horizontally positioning the arms, as originally taught by Lane.

6. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 5 above in view of Davies (US 4,189,074 A) and Spencer (US 3,913,811 A).

The modified Lane rack includes the claimed features except for an open-topped utility tray including a bottom wall and four side walls, and a pair of stabilizer bars fastened to the bracket mounting devices to support the tray below a level of the bumper.

Davies, however, also discloses a rack having an upstanding post and rearwardly projecting arms and teaches that an open-topped utility tray (52) is mounted below a top level of the bumper such that elongated cargo secured by the rearward projecting arms is rested on the utility tray for support. Davies teaches that the utility tray is mounted using a pair of stabilizer bars (63) but fails to disclose the stabilizer bars directly attached to bracket mounting device. Spencer, however, also discloses a utility tray and teaches that such a tray can be mounted directly to bracket mounting devices via a pair of stabilizer bars (19/20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach a utility tray supported by a pair of stabilizer bars on the modified Lane rack, as taught by Davies, and to attach the stabilizer bars directly to the bracket mounting devices, as taught by Spencer, in order to better support elongate cargo on the rack.

7. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 5 above in view of Spinka (US 5,108,018 A) and Eisenberg et al. (US 4,400,129 A).

The modified Lane rack includes the claimed features except for the bracket devices including spring devices to bias the frame.

Spinka, however, teaches that it is desirable for an upstanding post of a rack to have a pivoting portion that allows the rack to be pivoted away from the rear of the vehicle to permit easy access to the vehicle trunk. Spinka also teaches that a spring (40) is used to control the movement of the pivoting rack. While the spring of Spinka is entirely enclosed within the upstanding post, Eisenberg et al. teaches that such a spring (58) can be mounted between a rack's upstanding post (20) and the mounting bracket (26) that secures the rack to the vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the upstanding post of the modified Lane rack with a pivoting portion including a spring, as taught by Spinka, and to mount that spring between the upstanding post and the mounting bracket, as taught by Eisenberg et al., in order to allow a user to pivot the rack away from the rear of the vehicle through controlled movement in order to permit easy access to the vehicle trunk.

8. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 6 above in view of DuRant et al. (US 6,802,441 B1).

The modified Lane rack includes the claimed features except for there being a hitch member attached to the utility tray, the hitch member extending from the front to the rear of the utility tray and being positioned for connection at one end to the hitch mount of a vehicle, the other end of the hitch member including a second hitch mount and a hitch post mounted within the second hitch mount.

DuRant et al., however, also discloses a utility tray (101) secured to a bumper attachment (112/113) and teaches that in addition to the bumper attachment, the tray includes a hitch member (104) extending from the front to the rear of the tray and being positioned for connection at one end to the hitch mount of a vehicle, the other end of the hitch member including a second hitch mount (opening in other end) and a hitch post (105) mounted within the second hitch mount (Figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a hitch member attached to the utility tray of the modified Lane rack, as taught by DuRant et al., so that the tray would be supported by a hitch as well as the bumper for improved support.

9. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane in view of Carlson et al., and further in view of Stuntz.

Lane discloses a rack device (Figure 6) comprising a vertical, rectangular frame including upper and lower extremities and incorporating at least one pair of laterally spaced upstanding posts (20) including upper and lower ends, an elongated horizontal top rail (17) including rail connectors (16) for slidable attachment at desired vertical positions to the upstanding posts, a plurality of laterally spaced arm supports (19) projecting outwardly from respective rails, and arm connectors (18) mounted to respective ends of the arms to slidably connect the arms to the rails at desired horizontal positions. Lane fails to disclose at least a pair of horizontal rails and at least a pair of bumper mount bracket devices attached to the upstanding posts.

Regarding the horizontal rails, Carlson et al. disclose a similar rack having upstanding posts (20), a horizontal top rail (18), rearwardly projecting arms, and a plurality of horizontal rails (26,28,30) disposed below the top rail. Carlson et al. teach that the plurality of horizontal rails serve to stiffen the frame (col. 2 lines 39-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a plurality of horizontal rails (17) on the rack of Lane, as taught by Carlson et al., in order to better stiffen the rack and better support a load carried thereon. Including more horizontal rails (17) would also allow for more projecting arms (19), which would allow for improved storage/support capabilities.

Regarding the bumper mount bracket devices, Stuntz teaches that a rack having two upstanding posts (31a,b) and rearwardly projecting arms (56a,b) can be secured to a vehicle bumper and biased toward the back wall of the vehicle via a pair of spaced apart bumper mount bracket devices (Figure 5) attached to the upstanding posts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach bumper mount bracket devices to the upstanding posts of the Lane rack, as taught by Stuntz, so that the rack of Lane could be secured to the bumper of a hitch-less vehicle.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over the modified Lane device which is capable of being used in the intended manner, i.e., the device frame being used to carry elongated recreational cargo from the rear bumper of a recreational vehicle, the vehicle including a rear wall, the wall includes

an upper edge and a window, the top rail of the frame being disposed above the level of the window and adjacent the back wall upper edge, and the pair of bumper mount bracket devices being attached to the vehicle bumper to bias the frame toward the back wall. There is no structure in the modified Lane device that would prohibit such functional intended use (see MPEP 2111).

Response to Arguments

10. Applicant's arguments filed 3/12/07 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
5/29/07

NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER